

S.B. CIVIL SECOND APPEAL NO.203/2001**Ladu Lal & Anr.****vs****Smt. Jasoda Devi & Ors.****Date of order** : 3.9.2007**HON'BLE MR. PRAKASH TATIA, J.**

Mr.SL Jain,for the appellants.

Mr.JK Bhaiya, for the respondents.

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Heard learned counsel for the parties.

The appellants-tenants are aggrieved against the judgments and decrees of the two courts below dated 30th March, 1994 and 2nd June, 2001. The trial court decreed the suit for eviction and tenant's appeal was dismissed by appellate court. Hence, this second appeal.

Brief facts of the case are that a suit was filed by Banshilal and Motilal S/o of Kalu Ram for eviction of their tenants. In the suit Motilal S/o Kalu Ram was impleaded as party plaintiff and Balmukand S/o Motilal was also impleaded as party plaintiff no.3. The two courts below concurrently recorded finding of facts in favour of the plaintiffs and decreed the suit for eviction of the tenants-appellants.

According to learned counsel for the appellants, the suit has been filed by impleading Balmukund as party whereas he was not landlord and, therefore, the suit itself should have been dismissed because of mis-joinder of party as well as on the ground that suit for eviction of tenants cannot be maintained for the need of nephew of the landlord. It is also submitted that the suit can be filed for eviction by the landlord on the ground of his personal bonafide necessity as well as for the necessity of his family and nephew is not a member of family. It is submitted that family has not been defined in the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (hereinafter referred to as the Act of 1950) and in the same facts and circumstances of this case, this Court in the case of Radhavallabh Vs. Damodardas reported in RLW 1964 587 interpreted the word 'family' and in view of the said interpretation, the two courts below have committed error of law by decreeing the suit of the plaintiffs for eviction of the appellants on the alleged ground of necessity of Balmukund.

I considered the submissions of learned counsel for the parties and perused the record.

It is relevant to mention here that earlier a suit was filed by Bansilal and Kaluram in the year 1971 for eviction of tenants on the ground of personal necessity as it was according to those plaintiffs

was there in the year 1971. That suit was dismissed about in the year 1971 itself. The present suit has been filed in the year 1985 by Bansilal and because of death of Kaluram, his son Motilal also became plaintiff. Balmukund is the son of Motilal, therefore, is son of one of the landlord i.e., plaintiff no.2 Motilal. Therefore, the very foundation of argument of learned counsel for the appellants that suit has been filed for the necessity of nephew of the landlord is factually wrong. Apart from above, it will be worthwhile to mention here that the definition of 'tenant' has been given in sub-clauses (a) and (b) of clause (vii) of Section 3 of the Act of 1950. As per sub-clause (b) of clause (vii) of Section 3 of the Act of 1950 the same rights as of tenant have been given to the limited persons upon death of the tenant and the word 'family' has not been used in sub-clause (b) of clause (vii) of Section 3 and it has been provided that in the event of death of the person as is referred to in sub-clause (a), his surviving spouse, son, daughter and other heir in accordance with the personal law applicable to him.....shall be the tenants. In contra as per sub-clause (h) of sub-section (1) of Section 13 of the Act of 1950, the landlord can file the suit for eviction of his tenant on the ground of his own necessity as well as for the necessity of his family members. Here neither the words 'heir' 'successor' or 'decedent' have been used, but word 'family' has been used. The word 'family' is wide and cannot be restricted to 'heir' 'successor' 'decedents' only. In the judgment of

Radhavallabh (supra) relied upon learned counsel for the appellants also, this Court after considering the meaning of the 'family' as used in the Act of 1950 held that it has been used in the sense of common parlance and not in technical sense. Therefore also, the contention of appellant that suit could not have been decreed on the ground of necessity of Balmukund S/o Motilal is also devoid of any force. Not only this, even the plaintiff Banshilal in his statement stated that he has no other son. This fact further finds support from the fact that Bansilal also died and his wife alone was impleaded as party in the appeal. In that situation, there exists special reason for maintaining the suit for eviction of tenants on the ground of necessity of nephew of Banshilal also.

In view of the above reasons, I do not find any substantial questions of law are involved in this appeal. Hence, the appeal of the appellants is dismissed.

At this stage, learned counsel for the appellants sought time for vacating the suit premises.

It will be relevant to mention here that the first appellate court dismissed the appeal on 2nd June, 2001. The present second appeal was preferred by the appellants before this Court in the year 2001 and the appeal was dismissed in default and that was restored

by order of this Court dated 7.8.2007. In these facts and circumstances when the tenants got more than six years time for making alternative arrangements, therefore, in the facts and circumstances of the case, this Court is not inclined to grant more time to the appellants-tenants to vacate the suit premises.

Consequently, the prayer for vacation of suit property is also rejected.

(PRAKASH TATIA), J.

c.p.goyal/-